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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,957

04/08/2004

James M. Bailey

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02/24/2006

DALY, CROWLEY, MOFFORD & DURKEE, LLP  
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EXAMINER

AURORA, REENA

ART UNIT

PAPER NUMBER

2862

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/820,957

Applicant(s)

BAILEY ET AL.

Examiner

Reena Aurora

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 - 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 - 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____.  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/22/04</u> .   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Double Patenting*

Claims 1 - 36 of this application conflict with claims 1 - 36 of Application No. 10/942,577. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1 – 36 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 - 36 of copending Application No. 10/942,577. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claims 1 – 36 of copending application 10/942,577 are directed to the same invention as that of claims 1 – 36 of commonly assigned instant application. The issue

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of priority under 35 U.S.C. 102(g) and possibly 35 U.S.C. 102(f) of this single invention must be resolved.

Since the U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300), the assignee is required to state which entity is the prior inventor of the conflicting subject matter. A terminal disclaimer has no effect in this situation since the basis for refusing more than one patent is priority of invention under 35 U.S.C. 102(f) or (g) and not an extension of monopoly.

Failure to comply with this requirement will result in a holding of abandonment of this application.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 - 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsuge et al. (6,492,804).

As to claims 1 - 8, Tsuge et al. (hereinafter referred to as Tsuge) discloses a rotational speed detector comprising a plurality of magnetic field sensors (3, 4, fig. 1) for generating an RDIFF signal (Sa) proportional to a magnetic field at a first location relative to the object and an LDIFF signal (Sb) proportional to a magnetic field at a

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second location relative to the object; at least two rotation detectors (5, 6), wherein a first one of the rotation detectors (6) is coupled to at least one of the magnetic field sensors (3) and is responsive to the RDIFF signal for providing a first output signal indicative of rotation of the object and wherein a second one of the rotation detectors (5) is coupled to at least one of the magnetic field sensors (4) and is responsive to the LDIFF signal for providing a second output signal indicative of rotation of the object; and at least one of a direction-change processor (8) coupled to at least one of the rotation detectors to detect the vibration of the object in response to a change in the direction of rotation of the object as indicated by the output signal of the at least one rotation detector and to generate a direction-change output signal in response to the vibration (rotational vibration) (Note fig. 1).

As to claims 9 - 13, Tsuge discloses a rotational speed detector comprising a plurality of magnetic field sensors (3, 4, fig. 1) for generating an RDIFF signal (Sa) proportional to a magnetic field at a first location relative to the object and an LDIFF signal (Sb) proportional to a magnetic field at a second location relative to the object; at least two rotation detectors (5, 6), wherein a first one of the rotation detectors (6) is coupled to at least one of the magnetic field sensors (3) and is responsive to the RDIFF signal for providing a first output signal indicative of rotation of the object and wherein a second one of the rotation detectors (5) is coupled to at least one of the magnetic field sensors (4) and is responsive to the LDIFF signal for providing a second output signal indicative of rotation of the object; and a vibration processor

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(8) responsive to the first (Sa) and second (Sb) output signals from the at least two rotation detectors (5, 6) for detecting the vibration (rotational vibration) of the object.

As to claims 14 - 25, Tsuge discloses a rotational speed detector comprising providing a first output signal (Sa) indicative of a rotation of the object (1) with a first rotation detector (6); providing a second output signal (Sb) indicative of a rotation of the object (1) with a second rotation detector (5); detecting a change in direction of rotation of the object from the first (Sa) and the second output (Sb) signals; and generating a direction-change output signal in response to the change in direction (5 - 8).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reena Aurora whose telephone number is 571-272-2263. The examiner can normally be reached on Monday - Friday, 7:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, E. Lefkowitz can be reached on 571-272-2180. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Reena Aurora